

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
HARRISON PIPELINE COMPANY, LLC FOR
AUTHORITY TO OPERATE AS AN OHIO
PIPELINE COMPANY.

CASE NO. 18-116-PL-ACE

FINDING AND ORDER

Entered in the Journal on October 7, 2020

I. SUMMARY

{¶ 1} The Commission approves the application filed by Harrison Pipeline Company, LLC, as amended on April 22, 2019.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Pursuant to R.C. 4905.04, 4905.05, and 4905.06, the Commission has the authority to supervise and regulate pipeline companies as defined in R.C. 4905.03 and public utilities as defined in R.C. 4905.02.

{¶ 3} A pipeline company, as defined in R.C. 4905.03(F), is a company that is engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state, but not when engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids.

{¶ 4} Harrison Pipeline Company, LLC (Harrison Pipeline or Company) is a Delaware limited liability company that is registered to do business in Ohio and is a wholly owned subsidiary of Harrison Pipeline Holding, LLC.

{¶ 5} On January 19, 2018, Harrison Pipeline filed an application (Original Application), pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio.

{¶ 6} On January 19, 2018, in Case No. 18-73-GA-BLN, Harrison Pipeline also sought approval from the Ohio Power Siting Board (Board) to construct a pipeline for the proposed Harrison Power Plant in the Village of Cadiz Industrial Park, in Harrison County, Ohio. On April 20, 2018, the Board approved Harrison Pipeline's application with conditions, subject to the automatic approval process in R.C. 4906.03.

{¶ 7} Additionally, on January 19, 2018, Harrison Pipeline filed a motion for protective order and memorandum in support of its request regarding the confidentiality of Harrison Pipeline's projected financial statements attached as Exhibit D to the Original Application.

{¶ 8} On April 22, 2019, Harrison Pipeline amended the application (Amended Application) filed in this docket to reflect changes in the pipeline (length/route and diameter of pipe), the corporate ownership, and the managerial and technical expertise that the Company would rely upon in its application. Harrison Pipeline also proposed to begin construction in October 2019 and place the line in service in July 2020.

{¶ 9} Also on April 22, 2019, Harrison Pipeline filed a motion for protective order and memorandum in support of its request regarding the confidentiality of the pro forma financial statements submitted in support of the Amended Application and attached as Exhibit E.

{¶ 10} On May 23, 2019, Harrison Pipeline withdrew the certificate in Case No. 18-73-GA-BLN, as the Company had filed with the Board an amendment application on April 19, 2019, in Case No. 19-852-GA-BLN. The amendment application was approved, with conditions, by the Board's automatic approval process on May 20, 2019.

{¶ 11} On December 31, 2019, Staff filed its review and recommendation in response to the Amended Application.

B. *Summary of the Amended Application*

{¶ 12} In the Amended Application, Harrison Pipeline states that, when the Company begins operating as an intrastate pipeline company, its ultimate parent company will be Macquarie Infrastructure and Real Assets, along with other investment partners. The Company represents that it plans to construct and operate a fusion-bonded, epoxy-coated steel pipeline with a 0.375-inch wall thickness, a 16-inch diameter, and a maximum allowable operating pressure of 1,000 pounds per square inch in Harrison County, Ohio. Harrison Pipeline avers that the pipeline will interconnect with the Ohio River System pipeline and Energy Transfer Partners' Rover pipeline at or near Harrison Pipeline's meter station.

{¶ 13} Harrison Pipeline states that the purpose of the pipeline is to serve the proposed Harrison Power Plant, a 1,050 megawatt natural-gas-powered electric generation facility located in Cadiz, Ohio. Harrison Pipeline notes that the Board issued a certificate to Harrison Power, LLC, for the construction, operation, and maintenance of that facility in 2018 in Case No. 17-1189-EL-BGN.

{¶ 14} Harrison Pipeline contends that it seeks Commission approval to become a pipeline company that will operate, maintain, and transport natural gas through the new pipeline to the Harrison Power Plant. The pipeline will have a capacity of approximately 340,000 dekatherms (Dth)/day, of which approximately 170,000 Dth/day will be available to accommodate interruptible customers other than the Harrison Power Plant. Harrison Pipeline believes that other large commercial or manufacturing customers along the pipeline route may ultimately seek transportation of natural gas through the new pipeline.

{¶ 15} Harrison Pipeline states that NAES Corporation (NAES) will operate the pipeline. NAES operates and maintains over 160 power plants, most of which use natural gas as their primary fuel source and either own gas pipelines or have them on premises. Harrison Pipeline states that NAES' role in managing these pipelines is that of a contractor reporting to the power plant owner, and that NAES typically hires subcontractors to

conduct specialized U.S. Department of Transportation (DOT) regulated pipeline operations and maintenance (O&M) to include compliance programs, operator qualifications, public awareness, damage prevention, specialized testing, emergency response, and control room management of the physical workers servicing the pipeline. Additionally, Harrison Pipeline represents that NAES manages a Fitness for Duty program that monitors, manages, and conducts training on the DOT drug and alcohol compliance requirements for any NAES personnel who may be involved in and perform any function of pipeline O&M. NAES' Fitness for Duty group will also validate that the DOT drug and alcohol compliance is reciprocated for any pipeline O&M subcontractor selected, to include annual DOT drug and alcohol monitoring and information system filings, audits, and drug and alcohol training requirements. In addition, Harrison Pipeline avers that NAES screens appropriate subcontractors for experience and capabilities as well as safety history and cost of service. Harrison Pipeline argues that NAES has the requisite technical and managerial capability needed to operate this type of natural gas transmission system (Amended Application, Exhibit D).

{¶ 16} Harrison Pipeline states that the Company has retained Greg Trefz, Principal, Business Development for Oso Development Partners, LLC, in Houston, Texas, as a consultant on this project. Harrison Pipeline avers that Mr. Trefz was a member of Harrison Pipeline's prior management team before its acquisition (Original Application, Exhibit C). Additionally, Harrison Pipeline represents that Mr. Trefz has more than 25 years of commercial, business development, and marketing and trading experience within the energy industry and has held several business development roles within large public and private midstream organizations.

{¶ 17} Harrison Pipeline believes it has the requisite financial ability to operate the proposed pipeline (Amended Application, Exhibit E). Harrison Pipeline states that the Company will enter into a reasonable arrangement with Harrison Power, LLC or one of its affiliates after the pipeline is constructed and will file an application for approval of the reasonable arrangement under R.C. 4905.31. Furthermore, Harrison Pipeline clarifies that,

should the Company serve customers other than Harrison Power Plant, Harrison Pipeline will seek Commission approval for reasonable arrangements with those customers as well.

C. Summary of Staff's Review and Recommendation

{¶ 18} In its comments, Staff represents that it conducted a technical, financial, and managerial review of Harrison Pipeline. With respect to the technical and managerial review, Staff states that NAES, the contractor managing the pipeline, operates over 160 power plants, most of which use natural gas as their primary fuel source and either own gas pipelines or have them on the premises. Staff recognizes that NAES' extensive experience operating and maintaining gas pipelines in conjunction with combined cycle natural gas power plants is similar to the project in Harrison County. Additionally, Staff points out that NAES proposes to hire subcontractors to conduct the DOT regulated pipeline O&M. Staff points to NAES' management of the Fitness for Duty program monitoring, managing, and training on DOT drug and alcohol compliance requirements. Additionally, Staff reviewed Mr. Trefz's qualifications and believes that Mr. Trefz, as a former employee of the management team at Republic Development Partners, LLC, which initiated the project, has experience in sourcing, due diligence, structuring, and negotiation of commercial agreements necessary for the execution of pipeline projects. Staff notes that the primary purpose of the proposed pipeline is to supply fuel to an electric power plant, and, at this time, the only customer of the pipeline will be the power plant. Staff states that it is possible that other commercial or industrial customers along the pipeline route will seek transportation of natural gas through the new pipeline. Staff acknowledges that Harrison Pipeline has not submitted tariffs for review with the current application for authority to operate, but the Company expects to file applications for approval of a reasonable arrangement under R.C. 4905.31. Staff believes that Harrison Pipeline, through its contractor NAES and Mr. Trefz, has demonstrated the necessary technical and managerial capabilities to operate a pipeline company.

{¶ 19} Regarding the financial review, Staff states that it reviewed the financial support in place to fund the construction and future operations of Harrison Pipeline. Based on the ownership structure and the investors involved with the project, Staff states that it is satisfied that funding for the construction and start-up phases of Harrison Pipeline is adequate. Staff adds that anticipated revenues associated with serving the Harrison Power Plant are sufficient to offset expected ongoing operating expenses while also providing a reasonable return on a pro forma basis.

{¶ 20} Ultimately, Staff recommends that Harrison Pipeline be granted authority to operate as an Ohio intrastate pipeline company because the Company is contracting with NAES to provide technical and managerial capabilities for the construction, operation, and maintenance of the pipeline and retaining Mr. Trefz, who has been part of the project since its inception.

D. Commission Conclusion

{¶ 21} Upon consideration of the Amended Application and Staff's review and recommendation, the Commission finds that the Amended Application is reasonable and should be approved. Specifically, we find that Harrison Pipeline's request for authority to operate as an intrastate pipeline company in the state of Ohio should be granted. Harrison Pipeline has provided sufficient information in support of the Amended Application, including several exhibits intended to document that the Company and its affiliates have the necessary technical and managerial expertise and financial resources to construct and operate the proposed pipeline. Accordingly, we find that Harrison Pipeline is a public utility and pipeline company, pursuant to R.C. 4905.02 and 4905.03, and, as such, is subject to the Commission's jurisdiction. We further find that, pursuant to R.C. 4905.63, Harrison Pipeline is subject to R.C. Chapters 4901, 4903, 4905, 4909, and any other applicable chapter set forth therein. We also emphasize that Harrison Pipeline is subject to the ongoing jurisdiction and supervision of the Commission with respect to the gas pipeline safety standards and requirements, as set forth in R.C. 4905.90 through 4905.96 and Ohio

Adm.Code Chapter 4901:1-16. Finally, we note that our approval of Harrison Pipeline's application in this case does not relieve the Company of the obligation to file a proper application with the Commission, at the appropriate time, for approval of a proposed tariff or reasonable arrangement entered into with any customer.

E. Motions for Protective Orders

{¶ 22} As an additional matter, the Commission notes that Harrison Pipeline filed a motion for a protective order on January 19, 2018, and a second motion for protective order on April 22, 2019. Both motions are unopposed.

{¶ 23} Under R.C. 4905.07, "all facts and information in the possession of the [Commission] shall be public * * * [and] open to inspection by interested parties or their attorneys," except as provided in R.C. 149.43. R.C. 4905.07. In turn, R.C. 149.43 specifies that a record prohibited from release under state or federal law is not a "public record." R.C. 149.43(A)(1)(v). This exemption includes trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 732 N.E.2d 737 (2000) ("Trade secrets are exempt from disclosure under the 'state or federal law' exemption of R.C. 149.43.").

{¶ 24} Ohio law defines a "trade secret" as information that both "derives independent economic value * * * from not being generally known to, and not being readily ascertainable by * * * other persons who can obtain economic value from its disclosure or use" and "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." R.C. 1333.61(D). In analyzing whether a trade secret claim meets the statutory definition codified in R.C. 1333.61(D), one must consider: (1) the extent to which the information is known outside the business; (2) the extent to which it is known within the business; (3) the precautions taken by its holder to guard the secrecy of the information; (4) the savings effected and value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and

duplicate it. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

{¶ 25} Harrison Pipeline's motions for protective orders are filed pursuant to Ohio Adm.Code 4901-1-24(D), which permits a party to request, and the Commission to issue, any order necessary to protect the confidentiality of any information contained within a document "to the extent that state or federal law prohibits the release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law." Ohio Adm.Code 4901-1-24(D).

{¶ 26} By its first motion filed on January 19, 2018, Harrison Pipeline seeks to protect from public view certain information within its projected financial statements submitted in support of the Company's Original Application (Original Application, Exhibit D). Harrison Pipeline filed two unredacted copies of Exhibit D to accompany the motion as required by Ohio Adm.Code 4901-1-24(D)(2). Harrison Pipeline seeks to maintain the confidentiality of the projected financial statements in order to prevent giving an unfair competitive advantage to competitors and to safeguard Harrison Pipeline's ability to respond to competitive opportunities in the marketplace. Harrison Pipeline states that the Company is not a publicly traded company and, therefore, its financial information is not publicly available. Harrison Pipeline argues that the documents and information contained in Exhibit D contain competitively sensitive and highly proprietary business financial information such that they fall within the statutory characterization of a trade secret. R.C. 1333.61(D). Furthermore, Harrison Pipeline argues that it considers and has treated the documents and information contained in Exhibit D as trade secret, and in the ordinary course of business, the information is deemed confidential, is treated as proprietary and confidential by the Company's employees, and is not disclosed to anyone unless required pursuant to a legal proceeding. Furthermore, Harrison Pipeline alleges that nondisclosure of the information will not impair the purposes of R.C. Title 49 because the Commission and its Staff have full access to the information in order to fulfill its statutory obligations.

{¶ 27} By its second motion filed on April 22, 2019, Harrison Pipeline seeks to protect from public view certain information within its pro forma financial statements submitted in support of the Company's Amended Application (Amended Application, Exhibit E). Harrison Pipeline filed two unredacted copies of the pro forma financial statements to accompany the motion as required by Ohio Adm.Code 4901-1-24(D)(2). Harrison Pipeline seeks to maintain the confidentiality of the pro forma financial statements in order to prevent giving an advantage to unaffiliated customers with which the Company may, in the future, negotiate reasonable arrangements. Harrison Pipeline states that the Company is not a publicly traded company and, therefore, its financial information is not publicly available. Harrison Pipeline argues that publicly disclosing the pro forma financial statements – which were developed by, and are known only by, a small group of persons, either employed by the Company or are performing consulting services for the companies developing the Harrison Pipeline project – would provide future customers unaffiliated with Harrison Pipeline an advantage in negotiating the rates to be charged for its public utility services by divulging the company's expected fee revenues and expenses. Harrison Pipeline states that the companies developing the project have sought to guard the secrecy of the information by filing it with the Commission under seal. Furthermore, Harrison Pipeline avers that persons other than the owners and employees of the companies developing the Harrison Pipeline project, including consultants, would be unable to acquire and duplicate the information in the pro forma financial statements. As a final matter, Harrison Pipeline believes its forecasted financial statements deserve the same protective treatment prescribed by Ohio Adm.Code 4901:1-27-08(A) and Ohio Adm.Code 4901:1-24-08(A).

{¶ 28} Upon review of the information designated as confidential and referenced in both motions for protective orders, Harrison Pipeline's arguments in support of retaining that confidentiality, and legal standards discussed above, the Commission concludes that the material portions of Exhibit D of the Original Application and Exhibit E of the Amended Application constitute a trade secret, respectively. As such, release of the information is

prohibited. The Commission further finds that nondisclosure of the information is not inconsistent with the purposes of R.C. Title 49. Accordingly, the Commission finds that Harrison Pipeline's January 19, 2018, and April 22, 2019 motions for protective orders should be granted for a period of 24 months from the date of this Finding and Order. Any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date. Ohio Adm.Code 4901-1-24(F).

III. ORDER

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That Harrison Pipeline's Amended Application be approved. It is, further,

{¶ 31} ORDERED, That Harrison Pipeline Company, LLC, be added to the roll of public utilities regulated by this Commission. It is, further,

{¶ 32} ORDERED, That the motions for protective orders filed by Harrison Pipeline be granted. It is, further,

{¶ 33} ORDERED, That, for a period of 24 months, the Commission's docketing division maintain, under seal, certain information in Exhibit D of the Original Application and Exhibit E of the Amended Application, which were filed under seal in this docket on January 19, 2018, and April 22, 2019, respectively. It is, further,

{¶ 34} ORDERED, That a copy of this Finding and Order be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

LLA/hac

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/7/2020 2:32:33 PM

in

Case No(s). 18-0116-PL-ACE

Summary: Finding & Order approving the application filed by Harrison Pipeline Company, LLC, as amended on April 22, 2019. electronically filed by Ms. Mary E Fischer on behalf of Public Utilities Commission of Ohio